

Appl. No. : 09/489,588
Filed : January 21, 2000

REMARKS

Claims 29-42, 44, 45, 47-52, 54-62, 64, 66, 68, and 70-356 are pending in this application. Claims 29-42, 44, 45, 47-49, 51, 54-58, 60, 62, 64, 66, 70, and 71 have been amended. Claims 1-28, 43, 46, 53, 63, 65, 67, and 69 have been cancelled. Support for the amendments is found in the specification and claims as filed.

Interview

Applicants thank Examiner Nasser for the courteous and helpful interview conducted with Applicants' representative, Laura Johnson, on August 1, 2003, and for his indication that the claims as presented herein are allowable.

Allowable Subject Matter

Applicants gratefully acknowledge the Examiner's indication of allowability with respect to Claims 29-36, 40-41, 57-59, 66, 68, and 70, if rewritten to overcome the rejections under 35 USC §112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. The rejections under 35 USC §112, second paragraph, have been addressed as discussed below.

Claim 29 has been redrafted into independent form, and pending Claims 30-42 and 72-87 now depend from Claim 29 or an intervening claim. Claim 47 has been redrafted into independent form, and pending Claims 44-45 and 48-52 and new Claims 310-333 now depend from Claim 47, or an intervening claim. Claim 57 has been redrafted into independent form, and pending Claims 54-56 and 58-62 and new Claims 334-356 now depend from Claim 57, or an intervening claim. Claim 66 has been redrafted into independent form, and pending Claims 64 and 68 and new Claims 216-247 now depend from Claim 66, or an intervening claim. Claim 70 has been redrafted into independent form, and pending Claim 71 and new Claims 280-309 now depend from Claim 70, or an intervening claim. Claim 88 includes all limitations of allowable Claim 30, the base claim, and any intervening claim, and Claims 89-121 depend from Claim 88, or an intervening claim. Claim 122 includes all limitations of allowable Claim 31, the base claim, and any intervening claim, and Claims 123-152 depend from Claim 122, or an intervening claim. Claim 153 includes all limitations of allowable Claim 40, the base claim, and any intervening claim, and Claims 154-182 depend from Claim 153, or an intervening claim. Claim 184 includes all limitations of allowable Claim 58, the base claim, and any intervening claim, and Claims 185-215 depend from Claim 184. Claim 248 includes all limitations of allowable

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Claim 68, the base claim, and any intervening claim, and Claims 249-279 depend from Claim 248, or an intervening claim.

Claim Rejections – 35 U.S.C. § 112, first paragraph

Claims 28-71 have been rejected under 35 U.S.C. § 112, first paragraph as unclear in regard to the scope of “continuous glucose sensing” as defined by Applicants. The claims have been amended to delete reference to continuous glucose sensing, as discussed in the interview. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 112, second paragraph

Claims 28-42 have been rejected under 35 U.S.C. § 112, second paragraph. It is asserted that the recitation of “said bioprotective membrane positioned more distal to said housing than said glucose determining apparatus” is indefinite because it is unclear how the bioprotective layer can be distal with respect to the glucose determining apparatus when it is a part of the glucose determining apparatus. Applicants have amended the claims such that “said bioprotective membrane positioned more distal to said housing than said *membrane impregnated with an oxidase*” (emphasis added). The recitation of “a bioprotective membrane, said bioprotective membrane positioned more distal to said housing than said glucose determining apparatus and substantially impermeable to macrophages” has been changed to “a bioprotective membrane substantially impermeable to macrophages, said bioprotective membrane positioned more distal to said housing than said oxidase impregnated membrane” for all relevant claims. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejection - 35 U.S.C. §102(b)

Claim 69 has been rejected under 35 U.S.C. §102(b) as being anticipated Picha. Although Applicants do not agree with the propriety of the rejection, Claim 69 has been cancelled without prejudice, solely to facilitate issuance of the claims indicated to be allowable. The rejection is therefore moot.

Claim Rejection - 35 U.S.C. §103(a)

Claims 28, 37-39, 42-46, 48-56, and 60-62 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Shulman et al. in view of Ward et al. and Picha. Although Applicants do not agree with the propriety of the rejection, Claims 28, 43, 46, and 53 have been cancelled without prejudice, solely to facilitate issuance of claims indicated to be allowable. Claims 37-39,

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42, 44, 45, 48-52, 54-56, and 60-62 either depend from a claim indicated to be allowable, or have been amended to depend from a claim indicated to be allowable. The rejection is therefore moot.

Claim Rejection - 35 U.S.C. §103(a)

Claims 63-65, 67, and 71 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Picha in view of Ward et al. Although Applicants do not agree with the propriety of the rejection, Claims 63 and 65 have been cancelled without prejudice, solely to facilitate issuance of claims indicated to be allowable. Claims 64, 67, and 71 have been amended to depend from a claim indicated to be allowable. The rejection is therefore moot.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 8/1/03

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DEVICE AND METHOD FOR DETERMINING ANALYTE LEVELS

Shultz, et al.

Appl. No.: 09/489588 Atty Docket: DEXCOM.8DVC1

Approved
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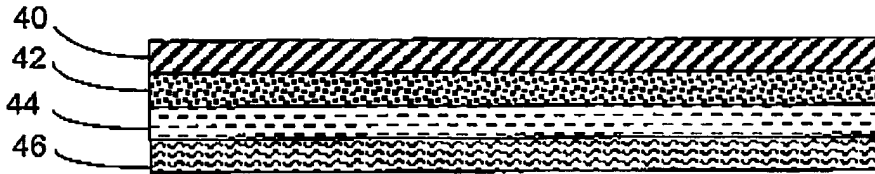


FIG. 1D